

**DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING**

Heber M Wells Building

160 East 300 South

P O Box 146741

Salt Lake City UT 84114-6741

Telephone (801) 530-6628

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSE OF  
BLACKMESA EXCAVATING INC**

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER**

**TO PRACTICE AS A CONTRACTOR  
IN THE STATE OF UTAH**

Case No DOPL-2010-422

**FINDINGS OF FACT**

1 The Division of Occupational and Professional Licensing ("the Division") filed a Notice of Agency Action in this matter on the 1st day of December 2010

2 This action is based upon Division records which show Blackmesa Excavating Inc, (the "Respondent") failed to demonstrate and maintain financial responsibility as required under Utah Code Annotated Section 58-55-306 and Subsection 58-55-502(1), and Utah Administrative Code Section R156-55a-306 and obtained a license by misrepresentation or omission, in violation of Utah Code Annotated Subsection 58-55-501(9)

3 The Respondent has filed a response to the notice of agency action. However, the response fails to demonstrate the obligations specified in the notice of agency action have been resolved. Respondent has claimed that it has continued to attempt to make repayment arrangements but so far the Respondent and the judgment creditor have been unable to reach an agreement. Accordingly, Respondent has been unable to meet the Division requirements for a probationary agreement and has been unable to demonstrate financial responsibility by a review of Respondent's financial history. The Respondent has also failed to demonstrate financial responsibility by the alternative means allowed of posting a license bond.

4 The response did not dispute the allegation that judgments or tax liens were outstanding at the date of renewal of Respondent's license when Respondent represented that all judgment or tax liens had been paid.

5 Therefore, according to Division records and after a review of Respondent's response in this matter, Respondent has failed to demonstrate and maintain financial responsibility as outlined above and obtained a license by misrepresentation or omission as outlined above, which constitutes a basis to sanction Respondent's license pursuant to Utah Code Annotated Subsections 58-1-401(1) and (2) and Utah Code Annotated subsection 58-55-503(4)

#### CONCLUSIONS OF LAW

6 Based upon Respondent's failure to demonstrate and maintain financial responsibility as required by Utah Code Annotated Section 58-55-306, Subsection 58-55-502(1), and Section R156-55a-306 and Respondent has engaged in unlawful conduct by Respondent's misrepresentation or omission in violation of or Utah Code Annotated Subsection 58-55-501(9), the Respondent has engaged in unprofessional conduct as provided by Utah Code Annotated Subsection 58-1-501(2)(a) and Respondent no longer meets the qualification for licensure as provided by Utah Code Annotated Section 58-55-306

7 The Division is authorized to revoke the Respondent's contractor license as provided by Utah Code Annotated Subsection 58-1-401(1) because the Respondent no longer meets the qualifications for license as required by Utah Code Annotated Subsection 58-55-102(19)

8 The Division is authorized to revoke the Respondent's contractor license as provided by Utah Code Annotated Subsection 58-1-401(2)(a) for engaging in unprofessional conduct as provided by Utah Code Annotated Subsection 58-1-501(2)(a) for failure to maintain financial responsibility as required by Utah Code Annotated Section 58-55-306

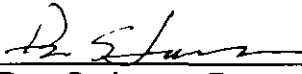
9 The Division is authorized to impose fine against Respondent as provided by Utah Code Annotated Subsection 58-55-503(4) for engaging in unlawful conduct as provided by Utah Code Annotated Subsection 58-55-501(9) for obtaining a license by misrepresentation or omission

#### ORDER

WHEREFORE, IT IS ORDERED Respondent's license to practice as a contractor in this state shall be placed on probation effective on the date of this order is signed and shall be revoked effective on November 30, 2011 unless prior to that date the Respondent has fully met the requirements for probation and entered into a probationary agreement acceptable to the Division or alternatively has posted a license bond with the Division in the amount of \$150,000

WHEREFORE, IT IS ORDERED Respondent's shall be assessed a fine in the amount of \$500 00 which is payable within 30 days of the date of this order is signed

1  
On behalf of the Construction Services Commission and the Division of Occupational and professional licensing, I hereby certify the foregoing Findings of Fact, Conclusions of Law and Order was submitted to the Construction Services Commission and the Division on the 26th day of October 2011 for their review and action

  
\_\_\_\_\_  
Dan S Jones, Bureau Manager

ORDER

THE ABOVE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in the matter of BLACKMESA EXCAVATING INC, is hereby adopted by the Construction Services Commission of the State of Utah

DATED this 26 day of Oct, 2011

  
CONSTRUCTION SERVICES COMMISSION  
Representative

I concur with the above Order, which the Construction Services Commission has approved

DATED this 26 day of Oct, 2011

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

  
MARK B STEINAGE  
Director

Agency review of this order may be obtained by filing a request for agency review within thirty (30) days after the date of this order. If you choose to file a request for agency review, you must adhere to the attached procedures